

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 AMAN SHEKHAR NAIDU,

11 Plaintiff, CASE NO. C20-1410-JCC
12 v.
13 Defendants.

14 ORDER

15 This matter comes before the Court on Defendants' motion to dismiss (Dkt. No. 24).

16 Having thoroughly considered the parties' briefing and the relevant record, the Court hereby

17 GRANTS the motion for the reasons explained herein.

18 Plaintiff was arrested and criminally prosecuted for violating a no contact order. (Dkt.
19 No. 5 at 2–4.) Plaintiff alleges that his arrest and prosecution were based on false statements and,
20 as a result, violated his civil rights. (*Id.*) Plaintiff filed a *pro se* and *in forma pauperis* (IFP)
21 complaint for civil rights violations pursuant to 42 U.S.C. § 1983, naming as defendants the City
22 of Lynwood, Prosecuting Attorney Chad Krepps, Victim Services Coordinator Tiffany Krusey,
23 and Police Officers Zach Yates and Joshua Magnussen. (*Id.*) Defendants move to dismiss,
24 arguing that the claims against Defendants Krusey, Yates, and Magnussen should be dismissed
25 under Federal Rule of Civil Procedure 12(b)(5) for insufficient service of process and the claims
26 against the City of Lynwood and Mr. Krepps should be dismissed under Rule 12(b)(6) for failure

1 to state a claim. (See generally Dkt. No. 24.)

2 1. Rule 12(b)(5)

3 A plaintiff must effectuate service on a defendant within 90 days after the complaint is
4 filed. Fed. R. Civ. P. 4(m); *see Boudette v. Barnette*, 923 F.2d 754, 757 (9th Cir. 1991) (an IFP
5 plaintiff who does not request service by the marshal remains responsible for timely service). If a
6 defendant is not served within 90 days after the complaint is filed, the Court, on motion or on its
7 own after notice to the plaintiff, must dismiss the action without prejudice against that defendant
8 or order that service be made within a specified time. Fed. R. Civ. P. 4(m).

9 Here, the Court provided Plaintiff multiple extensions of time to effect service. (See Dkt.
10 Nos. 16, 18.) Yet Plaintiff failed to effect service on Defendants Krusey, Yates, and Magnussen
11 within the time provided. (See Dkt. Nos. 24, 25, 26, 27.) Plaintiff argues that he did, in fact,
12 serve these defendants through his service on the City of Lynwood. (See Dkt. No. 28 at 1.) But
13 effective service generally requires: (a) personal delivery, (b) delivery to a defendant's usual
14 place of abode with someone of a suitable age or discretion who resides there, or (c) delivery to
15 an agent authorized to receive service. *See* Fed. R. Civ. P. 4(e). It is undisputed that none of
16 those occurred here. (See Dkt. Nos. 24, 28.) Accordingly, Defendant's motion to dismiss the
17 claims against Defendants Krusey, Yates, and Magnussen for failure to prosecute pursuant to
18 Federal Rule of Civil Procedure 12(b)(5) is GRANTED.

19 2. Rule 12(b)(6)

20 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
21 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*
22 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the
23 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
24 defendant is liable for the misconduct alleged.” *Id.* “A pleading that offers ‘labels and
25 conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *Id.*
26 (quoting *Twombly*, 550 U.S. at 555). “Dismissal can [also] be based on the lack of a cognizable

1 legal theory.” *Balisteri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). Although the
2 Court reviews *pro se* complaints liberally, they “nonetheless must meet some minimum
3 threshold.” *Brazil v. U.S. Dep’t of Navy*, 66 F.3d 193, 199 (9th Cir. 1995). “[A] liberal
4 interpretation of a . . . complaint may not supply essential elements of the claim that were not
5 initially pled.” *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

6 Plaintiff alleges that Prosecutor Krepps manipulated information and presented false
7 testimony to secure his conviction. (See Dkt. No. 8–9.) Even if these allegations are true, liability
8 is barred by prosecutorial immunity. *See, e.g., Jackson v. Barnes*, 749 F.3d 755, 766 (9th Cir.
9 2014); *Broam v. Bogan*, 320 F.3d 1023, 1029 (9th Cir. 2003). Plaintiff’s claims against the City
10 of Lynwood fare no better in that he does not articulate how his civil rights were violated and, if
11 they were violated, what the basis would be for assigning municipal liability. *See Gravelet-*
12 *Blondin v. Shelton*, 728 F.3d 1086, 1096 (9th Cir. 2013) (*Monell* liability requires a showing that
13 a municipality had a deliberate policy, custom, or practice that was the moving force behind the
14 constitutional deprivation). Accordingly, Defendants’ motion to dismiss claims against the City
15 of Lynwood and Prosecutor Krepps for failure to state a claim pursuant to Federal Rule of Civil
16 Procedure 12(b)(6) is GRANTED.

17 For the foregoing reasons, the Court GRANTS Defendants’ motion to dismiss (Dkt. No.
18 24). The claims against the City of Lynwood and Prosecutor Krepps are DISMISSED with
19 prejudice and the claims against Defendants Krusey, Yates, and Magnussen are DISMISSED
20 without prejudice.

21 DATED this 23rd day of June 2021.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE